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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
In the Matter of	)	
	)	
Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
In the Matter of	)	
	)	
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-32

REPLY COMMENTS OF FOCAL COMMUNICATIONS CORPORATION, HYPERION TELECOMMUNICATIONS, INC., KMC TELECOM INC., AND MCLEODUSA INCORPORATED

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EXECUTIVE SUMMARY

All parties who filed comments in this proceeding advocate greater access to high-speed data services and continued expansion of the Internet backbone network. There are marked differences in their positions on how to implement that goal. Those differences stem from whether they advocate free and fair competition in local telecommunications markets consistent with the carefully crafted statutory regime enacted to achieve it, or whether they seek to overturn that regime in the name of "progress."

On the one side are the BOCs, who initiated or have participated in this proceeding as part of their ongoing efforts to undermine the careful balance established in the 1996 Act between BOC entry into interLATA markets and BOC accomplishment of Section 271's 14-point checklist. To that end, the BOCs have argued that the Act constitutes a collection of "regulatory roadblocks" that is preventing the provision of "advanced telecommunications services to all Americans." However, as the BOCs well know (because they helped draft them), the alleged roadblocks -- Sections 251, 271 and 272 -- happen to be the 1996 Act's core procompetitive features. As such, these sections, relating to unbundling of network elements, wholesale pricing of retail services, and collocation, among other things, were designed to develop competition for all services, including advanced services, that rely in part on the local bottlenecks that BOCs continue to control. Indeed the overarching purpose of the 1996 Act (as a resounding majority of the substantive commenters have recognized) is to open markets to competition -- not to preserve and enlarge the monopoly advantages of BOCs.

At the other end of the spectrum are state PUCs, ratepayer advocates, as well as the National Association of Regulatory Utilities Commissioners, which have invested enormous energy mastering the complexities of unbundling, wholesale pricing, and collocation, while shepherding the process of opening local markets. In acting on BOC Section 271 petitions, presiding over cost proceedings and other local competition dockets, they have taken painstaking care to ensure that consumers will ultimately be able to choose for themselves the services that they want from among various providers. The PUCs correctly note that without the spur of competition, the BOCs would be in a position to settle back into their monopolist stance (deciding for themselves whether, when, how, and where to provision advanced services, all the while holding competitors at bay), the state PUCs oppose the Petitions as an end-run around the Act and the states' roles in enforcing it. Not surprisingly, companies that have invested hundreds of millions of dollars to expand the facilities necessary to provide these services and to open the local markets to competition concur with the PUCs and other state entities and oppose the thinly-veiled effort to gut the Act's fundamental goal of encouraging the development of competition.

While many of the essential details of the BOC proposals are vague or totally lacking, one thing that is clear about the plans and regulatory waivers proposed by Ameritech Corporation, Bell Atlantic Corporation, and US WEST ("Petitioners") is that, if such plans and waivers are implemented, these companies would turn the Act on its head by gaining a tighter stranglehold on the ability of local competitors to provide telecommunications services, *including advanced services*, while leveraging the BOC local monopoly into new markets. With no requirement to resell or unbundle services, BOCs could freeze competitors out of the increasingly critical high-speed data market. Because they could provide Internet telephony and otherwise exploit their new interLATA

authority, BOCs would have virtually no incentive to comply with Section 271. As such, they could continue to keep local markets inaccessible to competitors.

Petitioners, along with commenters BellSouth and SBC, provide no basis to believe that grant of the Petitions will more quickly make advanced communications available on a ubiquitous basis, much less from among a choice of competitive providers. For these reasons, the Petitions must denied.

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Focal Communications Corporation, Hyperion Telecommunications, Inc., KMC Telecom Inc., and McLeodUSA Incorporated (together, the "Joint Commenters") pursuant to the Federal Communications Commission's ("FCC") Order, DA 98-513 (rel. March 16, 1998) issued in the above-captioned proceedings, respectfully submit the following reply comments.

INTRODUCTION

Petitioners have asked the FCC to be excused from key provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), intended to facilitate the development of competition so that *they* can more easily provide high-speed bandwidth on an interLATA basis if they choose. The services to be offered are loosely defined and the proposals

lack any verifiable plan. One clear result of the BOC proposals is that rather than opening markets to competition, the Petitions if granted would fortify the BOCs' ability to impede competitor efforts to provide the same advanced services and all other services. Giving the BOCs what they desire will not speed the provision of advanced telecommunications services. It will certainly handicap the ability of competitors to offer high-speed data services. Specifically, with no required wholesale discount, competitors would be unable to resell advanced services. Competitors would also be unable to utilize unbundled high-speed services for local access to the Internet. In addition, without providing interLATA services through a structurally-separate affiliate (as the Act would require absent the relief sought by Petitioners), the BOC could use its power over local facilities to discriminate against retail competitors and undercut their sales. Moreover, grant of the requested relief will likely further delay provision of advanced services *by BOCs*. The BOCs have not promised to adhere to any schedule in deploying the services. If BOCs are granted the relief they seek, and having thereby subdued competitor efforts, the BOCs will not feel competitive pressure to offer advanced services to end-users and, should they ever, they would do so without price caps and therefore at supracompetitive (or monopoly) prices.

While preventing competitors from offering advanced services, BOCs could delay indefinitely in complying with Section 271's procompetitive requirements. After all, if the Petitions were granted, BOCs would already be in a position to exploit the provision of interLATA data traffic (including Internet telephony). Moreover, as long as the BOC had monopoly control of the local network, it could still lag in providing collocation space and otherwise allowing access to the local

network, while cornering the market for second and third customer lines with which to access the Internet.[1]

In light of the "hasty and self-serving remedies" that Petitioners seek,[2] Joint Commenters urge the Commission to reject their request. Our initial comments focused primarily on the FCC's inability to grant the BOC petition under current law. These reply comments focus on why granting the Petitions is contrary to the public interest and public policy. In particular, we address: (i) the wide-ranging agreement of the commenters that the Commission lacks the authority to grant the BOC Petitions; (ii) State PUC roles in market-opening provisions of the Act; (iii) the current -- and booming -- market for advanced services despite BOC-imposed obstacles and lack of BOC participation; (iv) the lack of detail in the BOC plans, which suggests ulterior anticompetitive motives; and (v) the appropriate context to consider the comments of equipment manufacturers and others.

I. A Wide Range of Parties Agree that the FCC Lacks the Authority to Grant the BOCs' Petitions.

The BOCs' reading of the Act -- that selective forbearance should be employed to benefit them and circumscribe the market-opening tools enumerated in Sections 251, 271, and 272 -- is nonsensical. Petitioners concede that they are not currently allowed to provide interLATA data services in-region. In response, many commenters have voiced their support for protecting the integrity of the "carrot and stick" approach of Section 271, and maintaining the *status quo* until the

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[1] *See* Bell Atlantic Petition, at 16; Ameritech Petition at 17.

[2] Comments of the Public Service Commission of Wisconsin and the Indiana Utility Regulatory Commission ("Wisconsin/Indiana"), at 3.

BOCs retreat from their obstinacy in opening local markets.[3] As explained by various commenters, the BOCs are incorrect to suggest that Section 706 somehow trumps the Act's generic forbearance provisions, which by their terms may not be used to avoid Section 271.[4]

Numerous commenters have correctly explained the straightforward operation of Section 706. Simply put, Section 706 is a policy statement that gives the FCC discretion -- not the obligation -- to exercise regulatory forbearance with respect to *some* regulatory requirements.[5] As Joint Commenters and others have pointed out, Section 706 must be read in the context of the Act and clearly cannot gut the express restrictions of the forbearance provisions of the Act, 47 U.S.C. §160(d), which forbid FCC exercise of regulatory forbearance until Sections 251(c) and 271 are fully implemented.[6]

The Act's clear mandate to require incumbents to unbundle services and otherwise comply with the Section 271 competitive checklist for the purpose of promoting competition is not accidental. Congress imposed these conditions in an effort to prevent BOCs from using their control of bottleneck facilities (such as local loops) in one market to impede competition in other markets where competitors need access to the same facilities.[7] In their comments, Ameritech and U.S. West

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[3] *See* e.g. Comments of Minnesota Department of Public Services ("Minnesota"). at 2.

[4] *See* Comments of the New Jersey Division of Ratepayer Advocate ("New Jersey"), at 3; Minnesota Comments, at 4.

[5] *See e.g.* New Jersey Comments, at 7-8; Minnesota Comments, at 4.

[6] *Id.*

[7] It is far from clear that even the Act's current requirements will achieve parity of access to network elements. Thus, as several parties have advocated in the context of LCI's petition to the FCC proposing "fast track" Section 271 Authority for BOCs that restructure themselves,

suggest that restrictions that hinge on LATA boundaries are unique to voice services.[8] This is misguided. High-speed data services are rapidly moving to dominate all switched services. This underscores the absurdity of the notion that Section 271 was meant to ignore everything but circuit-switched voice services. In any case, much of the infrastructure to be utilized for local access to the Internet Backbone, such as local cooper loops, is indistinguishable from that used for voice.[9] Depending on BOC interpretation, an "exception" for data could virtually swallow the public switched network. Moreover, LATA boundaries were expressly designed as safeguards to check a BOC's exploitation of local facilities.[10] In this light, the BOCs' supposedly strong desire to provide interLATA data services is wholly consistent with the incentives incorporated in Section 271.[11] So long as BOCs continue to ignore their obligations to provide access to local facilities consistent with the requirements of Section 271, regulatory waivers are not only premature, but unlawful.[12]

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incumbent networks should be divested to remove the continued incentives of BOCs to discriminate in favor of their own retail services. *See* CC Docket No. 98-5 ("LCI Proceeding").

[8] *See* US WEST Comments at 7; Ameritech Comments at 5. These commenters offer no legal basis for this conclusion. However, the BOCs concede that they are currently not permitted to provide interLATA data services.

[9] *See* Wisconsin/Indiana Comments, at 4; US WEST Comments, at 5; Ameritech Comments, at 4; US West Petition, at 24.

[10] *See eg.s U.S. v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995-1003 (D.D.C. 1983); *U.S. v. American Telephone and Telegraph Co.*, 552 F. Supp. 131, 188-189 (D.D.C. 1982).

[11] At the time they negotiated the language of Section 271, BOCs heartily endorsed the incentives. *See* Comments of Joint Commenters, at 9-10

[12] *See* Minnesota Comments, at 6 (Section 706 "did not authorize the FCC to sacrifice the Act's central object of promoting competition").

Even if Section 706 could be utilized in the manner that BOCs fantasize, any action on the requests by the BOCs would require a Notice of Inquiry.[13] There simply is no way given current conditions in the local exchange market that the requisite public interest and other showings under Section 706 could be satisfied. Specifically, the FCC would have to find that advanced telecommunications capability is not being deployed in a reasonable and timely fashion.[14] As the BOCs have demonstrated, the Internet Backbones are bustling; new construction at a breakneck speed is underway.[15] Moreover, because competition drives such investment, a point the BOC comments acknowledge,[16] the FCC would be hard pressed to grant BOCs the waivers they seek during a period when the BOCs do not even purport to have complied with market-opening requirements of the Act. With ongoing control of bottleneck facilities, BOCs will remain in a position -- and continue -- to discriminate against their competitors and therefore quell competition. Granting the Petitions would essentially substitute the Petitioners' assurances (that they have superior ability to provide high-speed broadband services) for a marketplace in which competitors can and seek to compete at every level to provide the proposed services. As the Minnesota Department of Public Service observed, the "best and most efficient means to improve access to both basic and advanced telecommunications services is for the FCC to require ILECs to meet their

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[13] *See* Comments of the National Association of Regulatory Utility Commissioners ("NARUC"), at 3; 4 ("none of the petitions present the record support needed for immediate FCC action or raise concerns of such extraordinary gravity or urgency that could support circumvention of the statutory directives."); *see also* Wisconsin/Indiana Comments at 3.

[14] *See* Section 706; Minnesota Comments at 5, 10.

[15] *See* Comments of United States Telephone Association ("USTA"), at 5.

[16] *See* BellSouth Comments, at 7; USTA Comments, at 6.

unbundling and resale obligations under the Act."[17] It is not in the public interest to deny consumers a competitive choice for advanced telecommunications services or any telecommunications services. That, however, would be the undeniable result of granting the Petition.

The Act's forbearance provisions were not intended to perpetuate the advantages enjoyed by the BOCs as monopoly providers. They certainly were not intended to allow them to leverage that monopoly into additional markets. As the BOCs have not complied with the procompetitive requirements of the Act, the BOCs' ability to constrain competitor efforts persists. In the words of one commenter, BOCs are not asking for forbearance with respect to minor provisions of the Act. Instead, the BOCs are asking to eviscerate the Act, a proposition that is all the more outrageous considering the growing and future importance of high-bandwidth capability to *all forms* of communications.[18] The BOC proposals simply cannot be squared with either the Act's spirit or its specific requirements. The BOC Petitions must be denied.

II. State PUCs Oppose BOC Petitions and Raise Important Issues that BOCs Have Ignored

When the Act was amended in 1996, Congress enlisted state support for the effort to open markets to local competition. State PUCs have key responsibilities related to opening local telecommunications markets.[19] The Eighth Circuit's interpretation of the Act underscored this fact. Clearly, the PUCs are, as the Act recognizes, key observers of the realities of the local exchange

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[17] *See* Minnesota Comments, at 1.

[18] *See* Minnesota Comments, at 7.

[19] According to the Wisconsin/Indiana Comments at 3, the Act calls for State-Federal cooperation in the effort to achieve the goals of the Act.

markets.[20] The PUCs now preside over an entire array of dockets, ranging from certification of new entrants to costing of unbundled elements and pricing of resale services. With each function, they require service providers or potential providers to explain how the ruling they advocate will benefit consumers in the state. Thus, in their roles as proxies for consumers, PUC concerns about the lack of substance and specificity of the BOC plans as well as the risk that BOCs will abandon indefinitely plans to comply with Section 271, are exceedingly telling.[21] In addition, PUCs appropriately raise questions relating to the states' daily role as arbiters of local competition, and how forbearance affects this role.

The states currently play an important role in opening local markets. For instance, the Act requires states to be consulted for Section 271 applications for authority to provide interLATA services which, of course, include advanced telecommunications services.[22] States arbitrate interconnection agreements which impinges on the waivers that BOCs seek. Further, state PUCs determine the appropriate level of regulation. For instance, the New Jersey Board of Public Utilities presides over determinations of whether a carrier offers a "competitive service," in which case the Board does *not* regulate, fix or prescribe the rates, tools, charges, rate structure, terms and conditions of service, rate base, rate of return, and cost.[23] The Board also has strict unbundling and pricing requirements, and is currently investigating the appropriate regulatory oversight for ISDN services,

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20 *See Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

21 *See eg.s* New Jersey Comments, at 7; Minnesota Comments, at 2.

22 *See* Wisconsin/Indiana Comments, at 3.

23 *See* New Jersey Comments, at 10-12.

a high-speed data connection offered to end-users.[24] The BOCs have not addressed the effect of the forbearance that they seek on these types of state roles on the forbearance that they seek.[25] The clear implication, however, is that these services would be deemed interstate and not subject to state regulation.

The states maintain that they have exclusive jurisdiction over intrastate services,[26] a point the BOCs have not reconciled. According to the NARUC comments, filed by resolution of its member state PUCs, BOCs should at the very least propose coordination strategies between states and the FCC.[27]

III. Advanced Services Are Being Deployed Without BOC Participation in the InterLATA Market and Despite BOC Roadblocks

BOCs have suggested that they alone can be the white knight to deploy adequate infrastructure to provide advanced services -- if only they had the incentive. As there are no

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[24] *Id.*

[25] State PUC commenters also state that the BOC Petitions are premature in light of proceedings related to universal service. For instance, NARUC points out that the FCC is separately addressing the bandwidth requirements for voice grade offerings. Grant of the BOC Petitions could interfere with this process, which is important to define the public switched network for purposes of Universal Service and its attendant goals. *See* NARUC Comments, at 5. Wisconsin/Indiana also raised the concern that the Petitions take no account of Section 254(b)(3) of the Act and its price and other requirements vis à vis rural end-users. Comments of Wisconsin/Indiana, at 4.

[26] *See* New Jersey Comments, at 11

[27] NARUC Comments, at 3. USTA attempts to paint a picture of regulatory inefficiency, leveling an attack about the costliness of regulatory delay. USTA Comments, at 17. This is ironic, however, as the Association nowhere acknowledges its incumbent members' responsibility in tying up state PUC resources. As noted above, the "carrot" of interLATA services are a necessary incentive for BOCs to open their local markets. As long as BOCs refrain, PUCs are forced into a position of supervising the provision of competitive services over the BOC-controlled public switched network. Until incumbents comply with the procompetitive provisions of the Act, consumer welfare will continue to suffer.

restrictions anywhere prohibiting a BOC from providing high-speed access services,[28] and BOCs are currently permitted to provide interLATA transport services everywhere outside of their regions, the basis of their complaint as well as its validity is highly suspect. The facts are that hundreds of millions of dollars are being raised and used to develop the Internet Backbone. In providing the services described, BOCs would not incur risks any different from those of competitors."[29]

Competitor opportunities to provide advanced services remain dependent on BOC actions. Competitors have recognized the ability to use existing infrastructure (such as copper loops) for, and have devoted significant resources towards, providing high speed access to local end-users. New, innovative competitors and established ones alike reiterate that they would be in a position to provision access to high-speed data networks for local customers today but for the stumbling blocks that BOCs have erected to prevent competitor advances on this front.[30] A key deterrent to even more rapid deployment of advanced services is a question of BOC compliance with the Act. Indeed, as long as BOCS do not live up to Section 251 of the Telecom Act, they continue their monopoly control of copper loops, central and end offices, and other facilities essential for xDSL and other

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[28] Comments of GTE at 6; *Cf.* Ameritech Petition, at 10.

[29] USTA and SBC, who have raised issues of incentives, have offered no basis to believe that Wall Street would not support BOC efforts in these regards. USTA Comments, at 4, SBC Comments, at 3. As the comments reveal, additional competitors are continuing to add Backbone. *See* USTA Comments, at 5. Only U S WEST has followed suit. Even so, as Minnesota commented, US WEST's plans seem principally to involve the connection of major population centers. It thus appears that the Company's major interest in evading the Act is not to serve rural are better, but instead to improve its ability to compete with other companies in providing advances services in major population centers. Minnesota Comments, at 9-10.

[30] *See eg.s* Comments of Covad Communications, at 8; Comments of DSL Access Telecommunications Alliance, at 9-14; Comments of MCI, at 4, 12.

high speed data technology -- and thus continue to stifle competition and deny consumers access to high-speed bandwidth. According to the comments, these competitors attempting to deploy high-speed access to end users have continued to encounter BOC intransigence.[31]

BOCs have ignored the available opportunities to provide services out-of-region and instead have chosen to go on the offensive with respect to in-region services. This deliberate and obviously coordinated plan underscores their recognition of a BOC's power to discriminate against competitors by being in control of infrastructure and competing to provide retail services with competitors who rely on the same infrastructure.[32] No competitor, even an out-of-region BOC, can rest comfortably facing such a situation. Even if BOCs comply with the Act's market-opening requirements, a BOC will continue to have the incentive to favor its own retail services and discriminate against those of a competitor.[33] Thus, BOC requests to be immune from the structural separation requirements of the Act are particularly bothersome. Ameritech suggestions that structural separation would deprive BOCs of efficiencies implies that those who are in control of network facilities can take advantage to the exclusion of those who are not in control of network facilities, but are required to rely on them just the same.[34] This creates a continued disincentive for BOCs to cooperate with competitors and highlights the grim prospects that BOCs can and will impose additional hurdles on competitor advances.

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[31] *Id.*

[32] *Cf.* Ameritech Petition, at 24 ("incumbent has no advantage").

[33] To this end, commenters in the LCI Proceeding have suggested divesting, or utilizing an independent service operator to govern, a BOC's bottleneck facilities, which would deal at arms-length with competitors and a BOC retailer alike. *See generally* LCI Proceeding.

[34] *See* Ameritech Petition, at 16.

BOCs not only have the ability to begin entering the advanced services markets that they have staked out, they also have the ability now to open their markets to meaningful local exchange competition. BellSouth implores the FCC to take swift action without noting its own power to achieve the goals of the Act more quickly by complying with the requirements of Sections 251-252.[35] Until BOCs do so, they can and do act to hinder competitor efforts to offer advanced services and, in so doing, shore up their monopoly powers.

IV. Lack of Action to Date and Lack of Detail in Plan Undercuts BOC Purported Intentions

The inconsistencies of BOC statements and actions and the vagueness of their plans underscore the baselessness of BOC attacks of the Act and suggest ulterior anticompetitive motives. There is absolutely no basis to believe that granting regulatory waivers will result in widespread availability of advanced telecommunications services. Nothing in the Petitions inspires any confidence that granting the BOC requests will actually result in providing the benefit of lower cost access to advanced services, much less that BOCs would service rural Americans.[36]

The Petitions do not offer any specificity in their plans to deploy advanced services. There is no attempt to demonstrate where infrastructure will be deployed, which infrastructure already in existence will be employed, and the start and finish dates of such a project. The BOCs have made no effort to explain why they have failed to offer advanced services where it is possible for them to do so. According to one state PUC, the lack of detail effectively precludes any rational and

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[35] BellSouth Comments, at i.

[36] Minnesota Comments, at 8-9.

reasonable analyses of the plans and their effect, including whether the plans, if implemented, could be used by BOCs as another tool to delay local exchange competition.[37]

The Petitions raise many questions about the credibility of the BOCs' arguments regarding their incentives, or lack of incentives, which are the basic foundation of their pleadings. In particular, the BOCs gripe that they cannot afford to develop and build technology and infrastructure for advanced telecommunications services if they must be made available to others. However, BOCs have already invested in SONET networks and are working, if not yet successfully, to develop xDSL technology. In addition, the BOCs have already deployed fiber optic networks (or Backbone transport) for their private communications needs. These lines cross in-region LATA boundaries and are equipped to handle customer traffic.[38] As soon as the BOCs comply with Section 271 of the Act, they should very quickly be able to begin offering advanced services with minimal investment.

It appears instead that the BOCs may be interested only in immunizing current infrastructure and service offerings from regulation and competitor access. As demonstrated in Section III, BOCs have already impeded competition for advanced services by failing to comply with Section 251. Currently, under Section 251, incumbents are required to resell services at a wholesale discount, cap the prices of certain services, provide to any requesting carrier nondiscriminatory access to individual network elements at rates that are cost-based and nondiscriminatory, and provide physical collocation. Section 272 also requires that a BOC that provides interLATA services must do so through a separate affiliate which must conduct all transactions with the BOC on an arm's length

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[37] New Jersey Comments, at 10.

[38] *United States v. Western Electric Company*, 569 F. Supp. 1057, 1097-98 (D.D.C. 1983)(authorizing construction of interLATA facilities).

basis. The Petitions seek dispensation from these requirements.[39] However, granting the Petitions would render competitor efforts to deliver advanced services dead in the water. With no requirement to unbundle, BOCs would be in an ideal position to restrict competitor advances in the local marketplace.[40] If the BOC persisted in blocking collocation space availability, a competitor's efforts to take advantage of a copper loop would be restricted. Moreover, without "separation" requirements, BOC retail organizations could undercut wholesale orders or, in more difficult to detect ways such as service scheduling, discriminate against competitors. Having curtailed the possibility that competitors could maintain a viable position in the market, with no price caps BOCs would be free to price as they want. Thus, if BOCs ever did provision high-speed services, consumers would be forced to pay prices and suffer the quality degradation that reflect a monopolist "marketplace."

Halting competitor attempts to offer "advanced services" will be crushing. Data networks are growing exponentially and are (and will increasingly be) used for all communications purposes including telephony. Even if BOCs did not at first offer voice services using Internet Protocol technology, they would be cementing their dominant positions over infrastructure of the future while

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[39] It is clear that no entity can replicate the ubiquitous telecommunications infrastructure, and particularly redeploy local copper loops. Thus, Ameritech's suggestion that resale will create an incentive not to build infrastructure is not only cruel, it is misplaced. In fact, companies have expended a great deal of resources to develop the technology to exploit copper loops for high-speed access. *See* Ameritech Comments, at 7.

[40] Ameritech and US WEST claims regarding the potential for interference between voice and data traffic are speculative at best (they conjure up arguments made by Ma Bell long ago with respect to plugging in bought telephones) and certainly do not warrant as broad a preventative measure as dispensing with unbundling requirements outright. *See* Ameritech Petition, at 23; US WEST Comments, at 5; US WEST Petition, at 48.

holding competitors back from realizing the opportunities that data services currently present. Given the far-reaching possibilities of their new interLATA authority, it would be highly unlikely that any BOC would endeavor to comply with Section 271. As an entire complement of data services continue to evolve, BOCs will realize more and more profitability as a result of any interLATA services they provide. BOCs could also take the opportunity to corner the demand for the many new high-speed local access lines that data users would require.[41] Given these prospects, it stands to reason that BOCs would continue to drag their feet on opening local markets to whatever competition is left. Indeed, the Petitions do not offer any commitments to comply with the Checklist at any time certain.

These factors suggest that the BOCs simply desire regulatory waivers so that they can expand their monopolies while slowing the continued progress of competitors. If anything, the clear result of their proposals is harm to the public. If the BOCs have their way, customers will have one possible provider of high-speed data services. That provider will have the ability to halt the efforts of all competitors and price as it wishes.

V. FCC Shouldn't Be Swayed by Short-Sighted Support of Various Interest Groups and Equipment Manufacturers

The municipal and consumer groups, schools and legislators who filed comments, apparently rallied by the Petitioners, naturally support the measures they perceive will best serve their rightful demands for immediate access to "advanced telecommunications services" and, in many cases, they ask the FCC only to conduct an appropriate inquiry to determine how to reach that result. There is no party that opposes that goal. It is doubtful, however, that the these groups are privy to the delays

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[41] *See note* 1 and accompanying text.

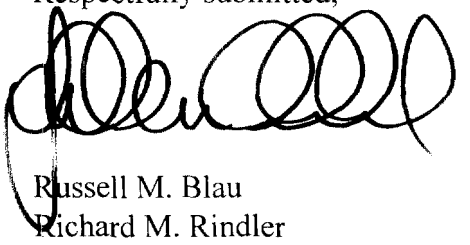
that BOCs are imposing in the opening of local markets. In any case, as rational consumers, it stands to reason that if they were fully informed of the possibility that approval of the BOC petitions would result in the services not being subject to price and quality competition from among multiple providers, they would reject the BOC proposals.

Finally, it appears that providers of equipment necessary to provide high-speed data services have simply made a business decision regarding what they believe will bring about demand for their products more quickly. If BOCs obtain the requested regulatory waivers, it will be a large new customer for the manufacturers. These commenters have made no showing that their positions are aligned with the best interests of end-users or, in the public interest.

CONCLUSION

The FCC should not forbear from enforcing any part of the Act so as to perpetuate and expand the advantages enjoyed by the BOCs as monopoly providers. For the reasons set forth above, the Petitions should be denied.

Respectfully submitted,



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Dated: May 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 1998, copies of the foregoing Reply Comments of Focal Communications Corporation, Hyperion Telecommunication, Inc., KMC Telecom Inc., and McLeodUSA Incorporated were served via hand delivery (*), or first class mail, postage prepaid, on the following:

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